IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1716

NORBERT A. LAING, an individual, on behalf of himself and all other persons, associations, firms and corporations similarly situated,

Petitioner,

vs.

MINNESOTA VIKINGS FOOTBALL CLUB, INC., John Doe, Richard Roe, et al., A.B.C., Inc., et al.,

Respondents.

SUPPLEMENTAL BRIEF NUMBER TWO IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

This Supplemental Brief Number Two In Support Of Petition For Certiorari is filed to bring to the attention of this Court the decision of the Sixth Circuit in *Grossman Development Co. v. Detroit Lions*, decided September 5, 1974. (Appendix herein).

The Sixth Circuit in *Grossman* cited both *Coniglio* and *Laing* yet in the footnote distinguishing *Flood v. San Francisco Forty-Niners*, spoke in terms of "*recreation*" (emphasis added) dollars of football fans. Such language supports Laing's affidavit in the Record herein that his dollars are attracted by other teams competing with the Vikings in the immediate geographic market such as the Minnesota North Stars (professional

hockey), Minnesota Twins (professional baseball), Minnesota Fighting Saints (professional hockey), and the Minnesota Gophers (Big Ten College football).

Petitioner is summarily out of Court on the competitive effect issue which was expressly *not* considered by the District Court herein (Petition, at A-6), yet Petitioner, of all the ticket cases, best met that issue with facts in the record.

Every Circuit Court, and the Northern District of California, considering the football ticket-tying cases has ruled in conflict with the Circuit Court and the District Court herein on the question of availability of tickets, i.e., "consumer compulsion".

The Second Circuit, and the Northern District of California, apparently conflict with the narrow relevant product market decisions of the Eighth, Sixth, and Seventh Circuits, in *Laing*, *Grossman*, and *Driskill*, respectively.

None of the Courts expressly considered the summary judgment criteria for antitrust actions as set out by this Court and instead the sports fan is summarily dismissed.

By summary disposition all the Courts appear in conflict with the relevant market showing allowed by this Court in *International Boxing Club v. U. S.*, 358 U.S. 242, 250-251, as cited in the Petition herein at pages 13 and 14.

Respectfully submitted,

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APPENDIX

NOT FOR PUBLICATION

No. 74-1093

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GROSSMAN DEVELOPMENT CO., on behalf of itself and all other persons similarly situated,
Plaintiff-Appellant,

v.

DETROIT LIONS, INC.,
Defendant-Appellee.

APPEAL from the United States District Court for the Eastern District of Michigan.

Decided and Filed September 5, 1974.

Before: CELEBREZZE, LIVELY and ENGEL, Circuit Judges.

PER CURIAM. The plaintiff, a holder of eight season tickets to the football games of the Detroit Lions, brought this class action. It is alleged that the practice of requiring persons who desire season tickets which entitle them to a designated seat at all regular season games to also purchase tickets for the same seat at two or three pre-season exhibition games constitutes a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The district court granted summary judgment to the defendant on the ground that —

> Because there is no allegation that competition is injured or affected by the LIONS' season ticket policy, there is no violation of Section 1 of the Sherman Act.

There is no dispute that at the time the complaint was filed the Lions had an effective monopoly in professional football with respect to exhibition games as well as regular season games in the Detroit area. Where the seller has a natural monopoly in both the "tying" (regular season tickets) and the "tied" (exhibition games tickets) products, the tie-in does not constitute a *per se* violation of the Sherman Act. *Coniglio* v. *Highwood Services, Inc., et al.*, —— F.2d ——, No. 73-2448 (2d Cir. April 17, 1974); *Laing* v. *Minnesota Vikings Football Club, Inc.*, 492 F.2d 1381 (8th Cir. 1974).[1]

After this case had been submitted to the district court for decision on the motion for summary judgment, plaintiff tendered an amended complaint alleging a violation of Section 2 of the Sherman Act, 15 U.S.C. § 2. Noting that the plaintiffs "expressly stated that they do not intend to show that there is any competitor actually affected by defendant's monopoly power . . . " or that "any specific potential competitor is affected," the court denied the motion to amend. We find no abuse of discretion in this ruling.

The judgment of the district court is affirmed for the reasons set forth in the opinion of District Judge Cornelia G. Kennedy.

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[1] After submission of this case appellant cited to the court the decision in *Flood v. San Francisco Forty-Niners*, No. C 72 1704, decided by the United States District Court for the Northern District of California on July 9, 1974. That case is readily distinguishable from the present one because of the finding that the Oakland Raiders provide competition in the Bay Area for the recreation dollars of football fans.